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High Public Officials Justly Forfeit Their Privacy

Viewpoint

by Michael Kinsley

Once The Wall Street Journal published its page-one expose of John Fedders last week, Mr. Fedders resigned almost immediately as director of enforcement at the Securities and Exchange Commission, and very few voices were raised to suggest that the story should not have appeared. Even the Journal editorial page gave its silent approbation. The editors here usually take a lofty, dismissive attitude toward the petty scandals that periodically excite lesser journalists, either pooh-poohing such matters as trivial or fingering them as part of a dark plot to raise taxes. But even these cool customers didn't leap to say that a public official should be able to beat his wife in the privacy of their home without suffering the glare of unwanted publicity.

Yet the story might easily never have seen the light of day. Both the New York Times and the Washington Post (ordinarily no shrinking violets) had been tipped off about it and failed to pursue it, at least in part because of queasiness about the subject matter. The managing editor of the Journal, Norman Pearlstine, is quoted as saying he "agonized a couple of weeks" before giving the go-ahead. During that time, the juiciest bits were just sitting there in public documents of testimony under oath in the Fedders divorce trial. Yet the Journal wasn't scooped. Mr. Fedders's financial difficulties provided a larger "context" that obviously made the Journal more comfortable about running it. Under different circumstances, at a paper less confident of its own well-deserved reputation for probity, about an article written with less care and good taste, the decision might well have been not to publish.

White House counsel Fred Fielding also had heard directly from Mrs. Fedders and her sister that Mrs. Fedders had been beaten. Mr. Fielding rightly says "there are always two sides to any such story," and he did summon Mr. Fedders to a meeting about it. But he apparently took no further action until the matter became public. If it hadn't, Mr. Fedders almost certainly would still be in his job.

Despite widespread griping on this page and elsewhere that the media have gone wild with irresponsibility, they clearly operate under plenty of self-imposed restraints. Some are appropriate. But if this case demonstrates anything, it is that journalists are still too fastidious about poking into the lives of public officials.

The traditions of journalistic self-restraint have always had their loopholes and double standards. One of my favorites is that journalists are sometimes willing to write about "controversies" about things, when they are unwilling to write about the things themselves. A few years ago the owner of my magazine refused to publish an article about a certain presidential candidate's sexual enthusiasms. When word of this got out, several publications that also had refused to discuss the matter published articles about the New Republic's refusal to discuss the matter. In the process they cited all the most controversial allegations that no one would publish.

The headline on Brooks Jackson's courageously frank Journal article about Mr. Fedders paid homage to this hypocritical tradition. "Storm Center," it said at the top of the patented Dagwood-sandwich-style headline block. Storm? What storm? There was no storm until the Journal ran its story. The fuss was about the story; the story wasn't about the fuss. Mr. Fedders's lawyer, Nathan Lewin, made a similar point in a letter asking Mr. Pearlstine to cancel the story. (The letter later appeared in the trade paper Legal Times.) Mr. Lewin argued, in effect, that an assertion on page one of the Journal that an official is "in trouble" is a self-fulfilling prophecy.

But Mr. Fedders's troubles were not created by the Journal. It's true, as his defenders point out, that there was no evidence his personal life was having any effect on his job performance. That's certainly one important test. At one extreme, an alcoholic congressman who's too drunk to filibuster is an easy case. Former etiquette called for journalists to look the other way as he crashed into colleagues in the Capitol hallways. Present etiquette calls for exposure, tearful admission, a trip to the Betty Ford Center, appearance on Phil Donahue and triumphal reelection. At the other extreme, a homosexual assistant secretary of a cabinet-level department, to cite an absolutely hypothetical example, is also an easy case. He is entitled to his privacy. Perhaps even a wife-beating assistant secretary shouldn't face nationwide exposure (though he should face other sanctions). That's a tough case. Mr. Fedders isn't a tough case, though, because he was a top law-enforcement official.

Most controversies of this sort involve elected politicians rather than appointed government officials. To me these are almost all easy cases in favor of publication, for two reasons. The first is that it's up to

the voters to decide what they regard as a relevant qualification for the job. When politicians and the more statesmanlike journalists say they don't think a certain matter should be revealed because it's not relevant, what they mean is they're afraid the voters may find it all-too-relevant.

The second reason is that no politician really attempts to keep his or her private life out of the papers. Quite the contrary, enormous effort is devoted to getting stories about their personal lives into the papers. They just want to control what these stories say. They don't want me to keep out of their personal lives. They want me to think their lives are saintlike. They brought it up. So if they are actually having it off, I'm entitled to know.

Yes, of course, this kind of thing can turn into a witch hunt. No one, even among journalists, wants to live in a world where reporters feel they have carte blanche to call up anyone they want, day or night, and ask literally: "Have you stopped beating your wife?" Matters of the heart are inherently murky.

On the other hand, there's nothing wrong with making examples of public officials as part of the public-policy debate. It helps to clarify their thinking.

One other aspect of the reaction to the Journal's Fedders expose deserves mention. When Mr. Fedders left private practice for the SEC, his income dropped by \$100,000. This exacerbated his financial problems, and apparently his emotional ones, too. Yet there has been no effort to excuse Mr. Fedders with the usual heart-aching (as in the Ed Meese case, for example) about the enormous sacrifice of public service. That's because Mr. Fedders himself had made clear that the ostensible sacrifice was really more of an investment. From the day he went to the SEC, Mr. Fedders apparently was slaving in anticipation of the money he would make as a leader of the private-securities bar, when he spun back out through the revolving door.

It's hard to think of a government job with more lucrative revolving-door potential than director of enforcement at the SEC. Yet Mr. Fedders's predecessor, the legendary Stanley Sporkin, the man who made the job what it is, still languishes on a government salary as general counsel of the CIA. How old-fashioned! This is hardly in keeping with the spirit of Reaganism. What's wrong with him, anyway? Someone oughtta look into it.

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